

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**REPLY COMMENTS  
OF  
GVNW CONSULTING, INC.**

April 8, 2019

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**I. INTRODUCTION & SUMMARY**

GVNW Consulting, Inc. (“GVNW”) submits these reply comments to address the filings responding to the Further Notice of Proposed Rulemaking (“*Further Notice*”)<sup>1</sup> issued by the Federal Communications Commission (“Commission”) in December, 2018 in the above-captioned proceedings.

A review of the comments filed in response to the *Further Notice* indicates that there is support for a robust challenge process relating to an overlap auction that would replace the 100 percent competitive overlap mechanism, which was eliminated by the Commission in the December 2018 *Report and Order*, with a 99 percent competitive overlap threshold. Therefore, the 99 percent competitive overlap threshold would be the initial starting point for the evaluation

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<sup>1</sup> *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Report and Order*, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) (“*Further Notice*” or “*Report and Order*”).

of whether a study area is sufficiently competitively overlapped before the support for the area is auctioned to competitive bidders. In addition, the record shows that FCC Form 477 data simply does not accurately identify the presence of a competitor in rural study areas and may falsely overstate the number of locations actually served with broadband in the country. Therefore, the Commission cannot use the Form 477 data alone to identify competitively overlapped areas and then immediately move to an auction with competitive bidding. Instead, the Commission must ensure that competitors have overlapped an area by allowing a robust challenge process of affected and interested parties that will verify that the area is competitively overlapped.

The record in this proceeding also supports a short-term mechanism that reasonably limits the maximum annual growth rate in Consumer Broadband-Only Loop (“CBOL”) line conversions for purposes of USF support calculations in order to address potential budget implications.

Finally, the record supports a proposal to apply a Tribal Broadband Factor to connections serving Tribal area customers.

## **II. THE RECORD SUPPORTS A COMPETITIVE OVERLAP EVALUATION THAT UTILIZES A ROBUST CHALLENGE PROCESS BEFORE AN AUCTION OF THE AREA TO COMPETITIVE BIDDERS.**

A review of the comments filed indicates that parties commenting on the *Further Notice* mostly agree that the Commission needs to proceed carefully as it replaces the 100 percent competitive overlap process eliminated by the *Report and Order* with an overlap auction. Commenters have urged the Commission to conduct a robust challenge process that evaluates competitive overlap at a 99 percent threshold. Further, commenters have urged that overlap auctions should occur less frequently than every other year but only after verification that areas are overlapped.

**A. The Challenge Process.**

Comments filed in this matter have shown the need for a robust challenge process since the current Form 477 data submitted to the Commission does not accurately identify the presence of a competitor in rural study areas and may falsely overstate the number of locations actually served with broadband in the country.<sup>2</sup> Therefore, the Commission cannot use the Form 477 data alone to immediately move to a competitive bidding process for areas deemed to be overlapped. Instead, the Commission, as many commenters have suggested, should use a robust challenge process to verify that an unsubsidized competitor has overlapped a specific study area before it proceeds with an auction.<sup>3</sup> Commenters have pointed out that the challenge process would be rigorous for both the Commission and interested parties. However, given the problems with the Form 477 data and the Commission's extensive experience with overlap determinations, it is a necessary process since it will ensure that a study area should be in an auction and the overall benefits of conducting the challenge process would outweigh the administrative efforts to do so.<sup>4</sup>

**B. Competitive Overlap Should be At A 99 Percent Threshold.**

Commenters have urged the Commission to narrowly construe definitions like “nearly” and “almost” in the context of an area being entirely overlapped, and have suggested that this context should mean moving forward with a process that evaluates competitive overlap at a 99 percent threshold.<sup>5</sup>

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<sup>2</sup> Comments of Vantage Point Solutions and its Affected Clients, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“VPS”), pp. 2-15; Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“ITTA”), pp. 4-5; Comments of US Telecom – The Broadband Association, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“US Telecom”), p. 5.

<sup>3</sup> US Telecom, p. 5-7; VPS, pp. 2-5; ITTA, pp. 4-5.

<sup>4</sup> ITTA, p. 5; VPS, p. 3.

<sup>5</sup> ITTA, p. 2; US Telecom, p. 2.

By the Commission using at least a 99 percent overlap by unsubsidized competition as a threshold, the Commission would then be able to employ a robust challenge process that would allow affected and interested parties to verify the extent of competitive overlap. This challenge process would ensure that competitors meet the threshold before the Commission holds an auction for an area with competitive bidding.

GVNW believes that the record supports a process that evaluates competitive overlap at a 99 percent threshold for the initial determination of whether an area is competitively overlapped. Further, that the Commission's initial determination should be followed by a robust challenge process to ensure that an area is overlapped before an auction with competitive bidding for that area can take place.

**C. A Competitive Overlap Auction Should Only Occur Every Ten Years.**

Commenters have pointed out that the auction process should not occur more frequently than every other year and that even then the auction would deter investment by rural carriers in their network because the possibility of carriers losing support would arise every other year.<sup>6</sup> In addition, commenters have noted that the Commission's previous CAF-BLS competitive overlap challenge process was to occur every seven years because that timeframe corresponds roughly with the typical investment cycle for carriers.<sup>7</sup>

GVNW believes that the record supports a competitive overlap challenge process with auctions with competitive bidding occurring no frequently than every seven years and preferably no more than every ten years so that the auction support cycle more closely matches the A-CAM support cycle of ten years. A competitive overlap challenge process that occurs every ten years would meet the Commission's goal to hold auctions with competitive bidding for support for

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<sup>6</sup> US Telecom, pp. 13-14; ITTA, pp. 13-14.

<sup>7</sup> *Id.*

overlapped areas while providing carriers with support that matches the A-CAM support cycle. Moreover, the Commission, by using a ten-year support cycle would provide a timeframe that would allow for stability and consistency, allowing carriers to make investments in their service areas without the constant concern of losing support.

### **III. LIMITING SUPPORT FOR A SHORT TIME FOR THE CONVERSION OF STAND ALONE BROADBAND LINES.**

The record supports a short-term transition mechanism that limits support for maximum annual growth rate in Consumer Broadband-Only Loop (“CBOL”) line conversions for purposes of USF support calculations in order to address potential budget implications that could stem from a rapid increase in consumer adoption of standalone broadband service. As commenters have pointed out, if the conversion to CBOL lines were allowed to grow unconstrained, carriers could be facing budget cuts similar to those under the Budget Control Mechanism which the Commission recently tried to fix in its December 2018 Order.<sup>8</sup>

A short-term transition mechanism would lock in CBOL conversions done prior to December 31, 2018 and would allow each company to recover based on a CBOL count no higher than the December 31, 2018 plus 10% of total voice and broadband lines annually. In addition, the Commission would then treat CBOL lines in excess of the limit as voice/data for USF purposes.<sup>9</sup>

### **IV. A TRIBAL BROADBAND FACTOR.**

Comments have shown that there are unique problems deploying and providing service to Tribal areas and that broadband availability in Tribal areas lags far behind the access to broadband and telecommunications services that most of the country enjoys.<sup>10</sup> The record supports carriers

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<sup>8</sup> US Telecom, pp. 7-8; ITTA, pp. 14-15.

<sup>9</sup> *Id.*

<sup>10</sup> Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“NTTA”), pp. 4-8.

that must overcome the challenges in providing service to Tribal area customers being allowed to receive support adjusted by a Tribal Broadband Factor.<sup>11</sup>

## V. CONCLUSION

For the reasons set forth herein, the record in response to the *Further Notice* supports the following:

- (1) The replacement of the Commission's 100 percent competitive overlap process with a robust challenge process that uses a threshold of 99 percent in determining whether an area is competitively overlapped and following that challenge process an auction with competitive bidding held every ten years;
- (2) A short-term transition mechanism that limits support for maximum annual growth rate CBOL line conversions for purposes of USF support calculations; and
- (3) The use of a Tribal Broadband Factor for support received by carriers providing service to customers in Tribal areas.

Respectfully submitted,

By: /s/ Stephen A. Gatto  
Stephen A. Gatto  
Southwest Division Manager  
[sgatto@gvnw.com](mailto:sgatto@gvnw.com)

/s/ Jeffry H. Smith  
Jeffry H. Smith  
President and CEO  
[jsmith@gvnw.com](mailto:jsmith@gvnw.com)

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<sup>11</sup> *Id.*, pp. 4-15.